IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 483 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEELAMRAI R PARIKH

Versus

STATE OF GUJARAT

Appearance:

Mr. B.P.Tanna for TANNA ASSOCIATES for Petitioner No. 1

Ms. Harsha Devani, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/03/2002

ORAL JUDGEMENT

Rule. Learned A.G.P. Ms. Harsha Devani waives service of rule on behalf of the respondents.

With the consent of parties, the matter is taken up for final hearing today.

1. The petitioner was appointed on ad hoc basis as a Tutor in the Oral Dental Pathology Department in the Government Dental College and Hospital, Ahmedabad. The

petitioner was appointed initially on ad hoc basis as back as on 30-11-1992. At that time, since regularly selected G.P.S.C. candidate was not available, such ad hoc appointment was given to the petitioner in the year 1992, and thereafter, her services were continued from time to time. It is not in dispute that the petitioner has continued on ad hoc basis for a long period without any break. Thereafter, on the basis of an advertisement issued by the Gujarat Public Service Commission, the petitioner has appeared for selection to the post of Oral Dental Pathology Tutor, Class II. The petitioner was interviewed by the G.P.S.C., but unfortunately, she was placed in the waiting list at serial no.1. The said order is placed on record at page 13. Accordingly, since the petitioner was not placed in the regular select list, but kept in waiting list, the department by an order dated 15-1-2002, terminated, the petitioner's services since regularly selected candidate was appointed in place of the petitioner at the aforesaid institution. The said termination order is at page 15, Annexure "C". The petitioner has challenged the aforesaid decision terminating her services from the said post by way of filing this petition.

2. At the time of issuing notice, this Court had also passed an order of status quo in favour of the petitioner. However, it seems that since the regularly selected candidate had already joined at the place where the petitioner is serving, the petitioner is not permitted by the Department to resume her duty at the institution.

3. At the time of hearing of this petition, it is argued by Mr. Tanna that the order in question is bad in law, firstly because, even though the petitioner has put in more than 10 years of service without issuing any notice to her as required by the provisions of the Bombay Civil Services Rules,1959, her services were terminated. He further argued that even though the petitioner has served for more than 10 years without any break, unfortunately, the petitioner was not placed on the select list by the G.P.S.C. but she was placed at waiting list no.1, with the result that the petitioner was compelled to go out of employment. Mr. Tanna also further submitted that, in any case, now the petitioner has also been selected as Tutor in Dental Material at Dental Hospital, Ahmedabad and is now awaiting the appointment order on the said post. He submitted that the petitioner is selected through G.P.S.C. and accordingly, moment the appointment order is given, she will immediately resume her duties at the selected place.

He submitted that, in that view of the matter, till the appointment is given, she should be allowed to continue in Dental College, Ahmedabad.

4. Learned A.G.P. Ms. Devani in her turn submitted that, it is no doubt true, that the petitioner is already selected as Tutor in Dental Medical College. She can join her services only after the appointment order is issued in her favour. She has submitted that so far as the present controversy is concerned, since the petitioner is appointed only on ad hoc basis, subject to availability of regularly selected G.P.S.C. candidate, she cannot claim any right to the said post since now the regularly selected G.P.S.C. candidate is available and accordingly, it is the submission of Ms. Devani that the petitioner's services were rightly terminated vide order at Annexure "C".

5. Considering the rival submissions of the parties, I am of the opinion that, since now the petitioner has been selected and is awaiting appointment order, it is not necessary to pass any order directing the respondents to allow the petitioner to resume duty on her original post as Tutor in Oral Dental Pathology. Further, it is required to be mentioned that the Department was required to follow the procedure of the Bombay Civil Services Rules, 1959 considering the fact that the petitioner has served continuously for 10 years without break. For this purpose, reference is required to be made to Rule 33 of the Bombay Civil Services Rules, 1959 which reads thus:

"3.[(1)(a) The service of a temporary Government Servant shall be liable to termination at any time by a notice in writing given to him by the appointing authority.]

(b) Where the temporary Government Servant has put in service for a period exceeding one year the period of such notice shall be one month and where such Government servant has put in service for one year or any period less than one year the period of such notice shall be one week:

Provided that the services of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowance for the period of the notice at the same rates at which he was drawing pay and allowances immediately before the termination of his service, or as the case may be, for the period by which such notice falls short of the notice period.

(2)(a) Where a notice is given by the authority other than the Government terminating of the services of a temporary Government servant of where the services of any such Government servant is terminated by an authority other than the Government either on the expiry of the period of such notice or forthwith by payment of pay plus allowances the Government may, of its own motion or otherwise reopen the case and after calling of the records of the case and after making such inquiry as it deems fit:

(i) confirm the action taken by the authority;
(ii) withdraw the notice;
(iii) re-instate the Government servant in service or,
(iv) make such other order in the case as it may consider proper.

Provided that except in special circumstances, which shall be recorded in writing, no case shall be reopened under this sub rule after the expiry of three months-

(i) from the date of notice where notice is given:

(ii) from the date of termination of service, in a case where no notice is given:

(b)Where a Government servant is re-instated in service under sub-rule (2) the order of reinstatement shall specify:

(i) the amount of proportion of pay and allowance if any to be paid to the Government servant for the period of his absence between the date of termination of his service and the date of his re-instatement: and

(ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes."

6. It is an admitted fact that such procedure is not followed, and on that ground, order of termination is required to be set aside. However, considering the fact that the petitioner has now already been selected and awaiting appointment order on the post of Tutor in Dental

Material, I do not give further direction to the respondents directing them to absorb the petitioner on her original post, ignoring the order of termination. Instead, I direct the respondents to give the petitioner the benefit of continuity of her services which she has rendered on the basis of her earlier appointment as she has served for more than ten years without any break. The said benefit should be given for the purpose of giving continuity in service so that she may not have to suffer in her retiral dues etc.

Under the circumstances, this petition is partly allowed. The respondents are directed to give appropriate appointment order to the petitioner on the basis of her selection on the post of Tutor in Dental Material. Learned A.G.P. has stated that such appointment order will be given after appropriate verification required as per Rules. It is hoped that the respondents may not delay the said appointment order for a long time. The petitioner may resume her duty without any undue delay after getting appointment order on the said post. After resuming her duty, the department is directed to give benefit of continuity in service to the petitioner by considering her past services which she has rendered in the earlier institution. In view of the aforesaid direction, it is not necessary to give any further direction asking the respondents to re-instate the petitioner on her original post. Rule is made absolute to the aforesaid extent only ,with no order as to costs.

(P.B. Majmudar, J.)
stanley-pbm.